...stumps were drawn at 6 o'clock. The former had scored 0 and the latter 93.

DEATH OF A MERCHANT.

PITTSBURGH, (Pa.) Monday, Sept. 10, 1855.

Henry Graff, an old and well known merchant of this city, formerly engaged in the transportation business, died this afternoon.

THE SOUTHERN MAIL.

BALTIMORE, Monday, Sept. 10, 1855.

New-Orleans papers of Tuesday last are to hand containing Havana dates to the 1st inst. The steamer Jacobo left Havana on the 30th ult. for Vera Cruz, the first Spanish transatlantic steamer arrived at Havana on the 28th.

RACHEL AS MARIE STUART.

Mlle. Rachel played last night to a brilliant and, as far as our eye could measure, as crowded a house as yet greeted her. The performance opened with a morsel from Moliere's charming comedy "Le depit Amoreux," which we enjoyed with a delicious relish. The vexations of Eraste and his excited explanation with his presumed rival, the droll imitation of the jealousy scene by the servants, and the humorous turn in which those worthies copy again their masters' feeling, by tearing up in a grotesque manner their love-letters; above all, Gros Rene's celebrated soliloquy on woman, were full of rich merriment. The scene in which he imitated the movement of the sea, to which Aristide, as he averred, likened woman, and the shaking of a vessel to and fro resembling her also in its restlessness, convulsed with laughter that portion of the house who could enter into the spirit of the piece. We, however, have not been tempted by even so seducing a premier plot from reiterating our suggestion that the comedy should follow, not precede, the Rachel play.

Nothing could be more full of lonely loveliness, sweet sadness and dejected dignity than Rachel's picture of Mary as she entered on the stage, with her dark raven hair and black velvet robe and white standing collar. We could almost fancy we saw before us one of the statues of Westminster Abbey, warmed by the touch of genius into life. In the first act Rachel has no extraordinary occasion for the exhibition of her powers. We see in her consolation of her nurse a noble resignation and tender softness, but we are soon reminded of her ever-conscious sense of her own dignity by the indignation with which she notices Mortimer's rude behavior. But soon this cloud passes into joy, when Mortimer, explaining that his rudeness was but a ruse, hands over to her the letter of the Cardinal Guise, and with rapture she kisses the paper. But on Burleigh's appearance joy and hope depart; a gloomy expression settles over her beautiful face; the consciousness of standing in the presence of an implacable enemy ever hovers about her brow, and the sense of injustice grows more and more as she listens to the inflexible minister until she at length, in the bitterness of her heart, calls out that Elizabeth has power to murder but not to judge her. The passionate emphasis with which she uttered these words naturally told on the audience, but what we most admired was that cloud of settled sadness, that air of predestination of her doom, which from the moment she enters on the stage fills you with a strange, unaccountable sorrow you can neither account for or control. She personates, too, every passion without ever losing that lofty bearing of royal dignity which subdues her every word. The second act is sadly weary. Rachel does not appear. We can fully appreciate the praiseworthy exertions of the excellent actors, but Lebrun is not Corneille, and the weariness which in the one is redeemed by classic taste, is absolutely intolerable in the other.

We were glad to be in the third act restored to Mary and to attention, and to be introduced to her in the prison-garden, with a radiance of enthusiastic happiness on her brow. How brightly Rachel looked at this moment, and how the tender emotions which thrill Mary's heart shone in every lineament! But suddenly comes a change. She grows pale. She staggers. The picture of joy has vanished. A trembling woman stands before you with quivering heart and heaving breast. It is the Queen who is announced, and nothing can surpass the feeling of horror which Rachel expresses as she endeavors to break away. But Melvil, her friend, comes. At seeing him there is a world of feeling in the relief she looks in beholding in such a moment of helplessness the face of a friend. Nothing can surpass the painful truthfulness in which her struggles are exhibited. "Je ne veux pas la voir," she says in a tone as if her whole being was shrinking with disgust at the thought of seeing Elizabeth. Then when the Queen does appear what a picture for this artist or the painter are Rachel's face and posé, as she exclaims with a deep incisive tone, vibrating with solemnity and intensity, "*Ah ce regard glacé m'apeint tante son ame.*" A cold sense of horror overpowers us, and henceforth our eyes are rivetted on Rachel alone. But in the intensity with which Rachel clothes every varying phase of this struggle, what is most wonderful is the all-powerful and overwhelming impression she produces by a single word. For instance when she gathers up her womanly soul and exclaims "a ce opprobre il me faut abaisser," In the one word opprobre a whole load of shame and degradation is expressed. Then who can forget the ferocity of Rachel, when in her element of passion, you can see her fix her claw in the heart of Elizabeth, while she points to her as "Le fruit d'adultere," and the majesty of her look and Vesuvius upheaving of her nature as she closes with "Vous seriez a' meshieds et moi votre reine." The farewell scene, though clothed with sad and solemn beauty, did not produce so deep an impression as its more impassioned predecessor.

Mlle. Rachel deserves doubtless the highest credit for the severe fidelity with which she adheres to the author's ideal of the character she personates, and refuses to surround it with any captious clothing. When, then, we express an opinion that Marie Stuart will not be one of her most popular parts here, we desire to convey that this result is owing to Le Brun's play, not to her personation, faultless and beautiful as it is. The glittering scene and the death picture so terrible in its truth, and the splendor of those sparkling trophies of her genius, which the costume carries, will always make Adrienne attractive. But what in spiritual beauty ever could or can surpass that personation, in which she first clutched the tragic crown. Byron never surpassed his first effort, as Childe Harold. Can Longfellow ever surpass Evangeline? Will Rachel, or any actor who lives or ever will live, surpass Rachel as Camille?

THE YELLOW FEVER.

THE SUFFERERS AT NORFOLK AND PORTSMOUTH —AN APPEAL.

The Committee appointed to obtain funds for the relief of the sufferers by pestilence at Norfolk, Portsmouth and Gasport, beg leave to inform their fellow citizens that at the latest dates the malignity of the pestilence was increasing in those places, without any prospect of its abatement until checked by frost.

In Norfolk alone there were from 1,200 to 1,500 on the sick list, while the ratio of mortality would be equal to that of thousands per day in such a population as ours. To add to the existing misery the small pox has now appeared among them.

The poor of these places must be aided until the pestilence disappears. The major part of the inhabitants who remain are prevented from removing by their poverty; and not one-fourth of those who are left can find employment to support them. The Howard Association has nearly exhausted its funds, while its appropriations for the relief of the sick and suffering amount to $8,000 per day. These facts are sufficient to awaken the sympathy of this community, and to call forth their prompt and active efforts to relieve this appalling degree of suffering. Our City thus far has been saved from this awful visitation of pestilence, and there can be no better offering of gratitude to the kind Providence which has shielded us than that of liberal contributions for the relief of our suffering fellow-citizens.

Donations can be sent to Wm. H. Macy, Esq., President of the Leather Manufacturers' Bank, No. 45 William-st., who is the Treasurer of the Committee.

E. MERIAM, Secretary. P. PERIT, Chairman.

NORFOLK AND PORTSMOUTH.

The General Committee report the following collections in aid of the poor and destitute sufferers from yellow fever at Norfolk, &c.:

Amount reported 7th inst., $8,333 30; Mlle. Rachel, $1,000; T. B. Coddington & Co., $50; Excelsior Lodge No. 195, I. O. of O. F., $50; James Leck & Co., $30; C. J. & F. W. Coggill, $30; Van Wyck, Townsend & Warren, $30; Fanshawe, Milliken & Townsend, $25; Hicks & Bell, $25; B., $25; W. Redmond, $25; Fred. Prime, $15; J. F. Alfonso & Co., $25; Henry A. Stone, $25; Wood & Lowry, $25; Jas. Lawrence, $25; J. B. Miller & Co., $25; the Clerks of the New-York Mutual Ins. Co., $46; Pierson, Jennings & Co., $25; Officers and Clerks of Manhattan Life Ins. Co., $25; D. A. Cushman, $25; Men employed in Connor's U. S. Type Foundery, $29 50; J. Connor & Son, $30 50; Thomas Morrell, $25; Joseph Hewlett, $10; Matthews, Hunt & Co., $10; J. B., $10; L. L., $10; E. H. Ludlow & Co., $10; Thaddeus Davis & Co., $10; L. Anderson, $25; J. F. Halstead & Co., $10; Cash, $37; M. D. Greene, $10; Capt. J. Tinkham, $10; E. B., $5; W. S. C. & Co., $10; Church of the Incarnation, the Rev. H. E. Montgomery, by J. B. Vandervoort, Treasurer, $161; Stephen Whitney, second contribution, $100; Hewitt & Co., $100; Dutilh & Co., $50; Greer, Turner & Co., $50; Patrick Dickie, $25; Barrett, Neplews & Co., $25; John C. Zimmerman, Sen'r., $25; Henderson, Smith & Co., $25; John Q. Jones, $25; J. H. Coley, $20; Conklin, Shephard & Co., $30; Robert Spier, $20; George R. Jackson & Co., $20; J. Paige Mumford, $30; Mr. Beers, $10; Seligman & Stettheimer, $15; F. V. S., $5; A Lady by Mr. J., $5; Richard A. Oakley, $5; Cash, $6; Brown Brothers & Co., $100; Rowland Johnson, $5; Benkard & Hutton, $25; Jona. J. Coddington, $10; Plymouth Church, Brooklyn, the Rev. Henry Ward Beecher, by Henry C. Bowen, $500; Atlas Mutual Insurance Company, by N. H. Osgood, President, $50; J. Green Pearson, $15; Alfred Tobias, $25; H. Sheldon, $20; Cash, $25; George Pahn & Co., $20; William Pahn, $10; A. H. W., $10; P. J. M. Suydam, $25; Cash, $5; Sympathy, $25; Scovill Manufacturing Company, $25; Waldo, Barry & Co., $20; Joseph Walker, $20; A Friend, $10; A Sympathizer, $10; Reis, Brothers & Co., $50; M., $3; H. T. Morgan, $25; Henry Bradel, $25; Chamberlain Robinson & Co., $25; John P. Nesmith, $30; Jas. G. Dale, $25; Diamond Lodge No. 140 I. O. of O. F., by J. H. Meed, Treasurer, $20; Henry Smith & Townsend, $25; Edwin Hoyt, $100; Hoyt Tillinghast & Co., $50; Chas. N. Talbot, $5. Total, $12,338 06.

No. 45 William-st., Sept. 10, 1855. W. H. MACY, Treas'r.

[By Telegraph.]

BALTIMORE, Monday, Sept. 10, 1855.

We have received no later intelligence from Norfolk this morning.

The steamship Benjamin Franklin, which brought the yellow fever from St. Thomas, is in the river below this city, but it is supposed she will not be permitted to come up. There is some excitement at the Point, and threats have been made that she shall be destroyed if permitted to approach the city.

The ladies attached to the various churches of this city are making up clothing to be sent down. The children will undergo a purification before being received at the House of Refuge, and their old clothing burnt. The "Bay Line" has volunteered to bring the children on free of charge.

A dispatch from Wildon says large numbers have left Norfolk and Portsmouth for the camp established by the authorities of Baltimore at Old Point. A stock of provisions was left at the encampment on Saturday.

At Portsmouth, Dr. Collins, President of the Railroad, is dead.

The collection in this city for the relief of the sufferers now reaches nearly $22,000.

Richard Perry Miller, of Philadelphia, died this morning of yellow fever, at the Quarantine Hospital below Baltimore. He was returning from Portsmouth, where he had been acting as an apothecary.

BALTIMORE, Monday, Sept. 10—10 P. M.

The Relief Committee left here in the Norfolk boat this evening, to make arrangements for bringing to this city two hundred orphan children. They will be quartered in the new House of Refuge now in process of building, and which is being prepared for their accommodation. They will reach here on Saturday.

CITY POLITICS.

FIFTH WARD WHIG NOMINATIONS.—The Whig Assembly and Charter Convention met during the last week at the "Fifth Ward Museum Hotel," and made the following nominations:

For Assembly—Charles C. Nott.
For Councilmen—VIIIth District. No choice as yet. IXth District, G. A. Barney. Xth District—W. H. Crane.
For Assessor—J. M. Bennet.
For School Commissioner—J. M. Tuthill.
For Inspector— — Scofield.
For Trustees—J. M. Wilson, C. C. Curtis.

ELEVENTH WARD WHIG NOMINATIONS.—The Whig Charter Convention of the Eleventh Ward have made the following nominations:

For Councilmen—XXXth District, William Duryea; XXXIst District, J. M. Radley.

THIRTEENTH WARD REPUBLICAN MEETING.—This meeting last evening, upon convening at Onderdonk's, corner of Grand and Clinton-sts., was called to order by Mr. A. Thompson, upon whose motion Mr. DAVID TAPPEN was called to the chair, and Mr. James Quin was appointed Secretary. The Chair explained the object of the meeting.

Marcus B. Ferris was selected as Delegate to Syracuse, and Wm. A. Weed to act as alternate. The following gentlemen were appointed to represent the Wards as Delegates in the General Committee: Edward Collins, Samuel Atkinson, David Tappen.

The Chair, in a few brief remarks, stated his intention of calling them together again in a few days to organize a Republican Club for the Ward.

FIFTH WARD REPUBLICAN MEETING.—This meeting was held at the Fifth Ward Museum Hotel last evening. It was organized by appointing A. W. Leggat, Chairman, and James W. Riggs, Secretary. The following persons were elected as Delegates to the General Committee: A. R. Booth, L. W. Parks, J. W. Riggs; and the following as Delegates to the State Convention: A. W. Leggat, delegate; Jos. B. Taylor, alternate. The meeting then adjourned.

NINETEENTH WARD FREE-SOIL CLUB.—The meeting of this Club, which was held last night according to the Call, was not sufficiently well attended to warrant the transaction of any important business, and was accordingly postponed until some future evening.

MOVEMENT IN THE NINTH WARD.—A meeting of the citizens of the Ninth Ward was held last evening at No. 124 Amos-st. On motion, Charles S. Wright, Esq., was called to preside, and William Ewing was appointed Secretary. Resolutions were passed to form a Republican party. Two delegates were appointed to represent the Assembly District in the Convention to meet at Syracuse, viz.: Thomas S. Berry and the Hon. C. C. Leigh. Also three Delegates to the County Convention; the Hon. C. C. Leigh, David Marsh and Henry P. See were appointed. A Ward Committee was also appointed of three from each Council District, with power to fill vacancies, and also with power to call public meetings, &c.

PASSMORE WILLIAMSON'S CASE.

Correspondence of The N. Y. Tribune.

PHILADELPHIA, Sept. 9, 1855.

* * * I presume you have read, and will publish before this reaches you, the decision of the Supreme Court of this State upon an application by Passmore Williamson for a writ of habeas corpus. Judge Black delivered the opinion of the Court of four members, Judge Knox dissenting. I read both papers this morning with a sincere desire to arrive at a just conclusion upon the subject. I am pained to say, however, that the opinion of the Court carries dismay to the heart and conscience. I am no Abolitionist, and never have been, but I feel justly alarmed for my own liberty if the doctrine of the Supreme Court is to be the acknowledged law of the State. The old landmarks of constitutional liberty are all swept away, and an uncontrolled despotism is established by the Judiciary. The time has come when men should think, and act accordingly. The spirit of Freedom has fled the Commonwealth, and four tyrants sit with their iron heels pressing upon the fair form of Liberty as she lies prostrate before them. Judge Kane is declared to be supreme. A Court of limited and well defined jurisdiction is acknowledged to be the *master* of the Supreme Court of this great State, and that the State Court has no power to decide whether the District Court of the United States has jurisdiction in a case or not, or exercises its powers according to law; and said Court may imprison a citizen any length of time. Judge Black says he has nothing to do with the question of jurisdiction. Passmore Williamson was guilty of contempt, which is a crime, for which he is being justly punished. This is the law as dealt out by the Supreme Court; but, if I mistake not, the freemen of the State will teach the Judges a different lesson—that personal liberty is guarded by other and more efficient principles than those avowed by them.

The dissenting opinion of Judge Knox will be read with interest. There is a vein of candor about it which recommends it to every reader; a spirit which speaks for Liberty, not with uncontrolled liberty, but for constitutional liberty checked and governed by wise laws. No man can read the two papers without adopting the dissenting opinion, unless his judgment is swayed by interest or prejudice. Who does not feel safer under the policy shadowed forth by Judge Knox? Let the principle be tested as applied to individuals and there will be no difficulty about it. The opinion of the Court is special pleading—is Jesuitical in the extreme—is the argument of tyrants the world over. It makes no impression upon the heart; speaks no more for Freedom, and what is worse, it attempts to stultify the judgment of every reader. It is the argument of the taskmasters, and designed for their benefit; but no Court of Record in a Slave State would degrade itself by preaching such doctrine. Judge Black and his compatriots completely annihilate State Rights, by yielding the guardianship of the personal liberty of our citizen to a District Judge of the United States Court. Southern judges would not do this, nor skulk the question of jurisdiction as between them and a Federal Judge. Our judges wish to win fame by protecting their powers, by making *new decisions*, and thus to convert Slavery into a National Institution instead of allowing it to remain a local one, guarded and protected by State laws. Judge Knox has handsomely vindicated State Rights, by asserting the power of the State Judiciary to protect all of its citizens.

PHILADELPHIA.

THE WHEELER SLAVE CASE.

OPINION OF JUDGE KNOX—IN THE MATTER OF THE PETITION OF PASSMORE WILLIAMSON FOR A WRIT OF HABEAS CORPUS.

KNOX, J. I do not concur in the opinion of the majority of this Court refusing the writ of habeas corpus, and shall state the reasons why, in my judgment, the writ should be granted.

This application was made to the Court whilst holding a special session at Bedford, on the 13th day of August, and upon an intimation from the counsel that in case the Court had any difficulty upon the question of awarding the writ, they would like to be heard, Thursday, the 16th of August, was fixed for the hearing. On that day an argument was made, by Messrs. Meredith and Gilpin, in favor of the allowance of the writ.

I may as well remark here, that upon the presentation of the petition I was in favor of awarding the habeas corpus, greatly preferring that the right of the petitioner to his discharge should be determined upon the return of the writ. If this course had been adopted we should have had the views of counsel in opposition of the discharge, and, moreover, if necessary, we could, after the return, have examined into the facts of the case.

I am in favor of granting this writ, first, because I believe the petitioner has the right to demand it at our hands. From the time of Magna Charta the writ of habeas corpus has been considered a writ of right, which every person is entitled to *ex merito justicia.* "But the benefit of it," says Chancellor Kent, "was in a great degree eluded in England prior to the statute "of Charles II, as the Judges only awarded it in term time and "they assumed a discretionary *power of awarding or refusing it.*" —2 Kent Commentaries 26. And Bacon says, "Notwithstanding "the writ of habeas corpus be a writ of right, and what the "subject is entitled to, yet the provision of the law herein "being in a great measure eluded by the Judge as being only "enabled to award it in term time, as also by an *imagined notion* "*of the Judges* that they had a discretionary power of granting "or refusing it," the act of 31 Charles II. was made for remedy thereof.

I am aware that both in England and this country, since the passage of the statute of Charles II it has been held that where it clearly appeared that the prisoner must be remanded, it was improper to grant the writ, but I know of no such construction upon our act of 18th February, 1785. The people of the United States have ever regarded the privileges of the habeas corpus as a most invaluable right, to secure which an interdiction against its suspension, "unless when in cases of rebel-"lion or invasion the public safety may require it," is inserted in the organic law of the Union, and, in addition to our act of 1785, which is broader and more comprehensive than the English statute, a provision in terms like that in the Constitution of the United States is to be found in the Constitution of this State.

It is difficult to conceive how words could be more imperative in their character than those to be found in our statute of '85. The judges named are authorized and required, either in vacation or term time, upon the due application of any person committed or detained for any criminal or supposed criminal matter, except for treason or felony, or confined or restrained of his or her liberty, under any color or pretense whatsoever to award and grant a habeas corpus, directed to the person or persons in whose custody the prisoner is detained, returnable immediately. And the refusal or neglect to grant the writ required by the act to be granted renders the judge so neglecting or refusing, liable to the penalty of three hundred pounds.

I suppose no one will doubt the power of the Legislature to require this writ to be issued by the Judges of the Commonwealth. And it is tolerably plain that where, in express words, a certain thing is directed to be done, to which is added a penalty for not doing it, no discretion is to be used in obeying the mandate.

The English statute confined the penalty to a neglect or refusal to grant the writ in vacation time, and from this a discretionary power to refuse it in term time was inferred, but an Act of Assembly does not limit the penalty to a refusal in vacation, but is sufficiently comprehensive to embrace neglect or refusal in vacation or in term time.

I have looked in vain through the numerous cases reported in this State to find that the writ was ever denied to one whose application was in due form, and whose case was within the purview of the Act of Assembly.

In Republica vs. Arnold, 3 Yates, 263, the writ was refused because the petitioner was not restrained of his liberty, and therefore not within the terms of the statute; and in ex parte Lawrence, 5th Binney, 304, it was held that the Act of Assembly did not oblige the Court to grant a habeas corpus where the case had already been heard upon the same evidence by another court. Without going into an examination of the numerous cases where the writ has been allowed, I believe it can be safely affirmed that the denial of the writ in a case like the present is without a precedent, and contrary to the uniform practice of the bench, and against the universal understanding of the profession and the people; but what is worse still, it appears to me to be in direct violation of the law itself.

It may be said that the law never requires a useless thing to be done. Grant it. But how can it be determined to be useless until the case is heard? Whether there is ground for the writ is to be determined according to law, and the law requires that the determination should follow, not precede the return.

An application was made to the Chief Justice of this Court for a writ of habeas corpus previous to the application now being considered. The writ was refused, and it was stated in the opinion that the counsel for the petitioner waived the right to the writ, or did not desire it to be issued if the Chief Justice should be of the opinion that there was not sufficient cause set forth in the petition for the prisoner's charge. But this can in nowise prejudice the petitioner's right to the writ which he now demands. Even had the writ been awarded, and the case heard, and the discharge refused, it would not be within the decision in ex parte Lawrence, for there the hearing was before a Court in term time, upon a full examination of the case upon evidence adduced, and not at chambers; but the more obvious distinction here is that the writ has never been awarded. And the agreement of counsel that it should not be in a certain event, even if binding upon the client there would not affect him here.

Now, while I aver that the writ of habeas corpus, *ad subjiciendum*, is a writ of right, I do not wish to be understood that it should issue, as a matter of course. Undoubtedly the petition must be in due form, and it must show upon its face that the petitioner is entitled to relief. It may be refused if, upon the application itself, it appears that, if admitted to be true, the applicant is not entitled to relief; but where, as in the case before us, the petition alleges an illegal restraint of the petitioner's liberty, under an order from a Judge beyond his jurisdiction, we are bound in the first place to take the allegation as true; and so taking it, a probable cause is made out, and there is no longer a discretionary power to refuse the writ. Whether the allegation of the want of jurisdiction is true or not, is determinable only upon the return of the writ.

If one has averred in his petition what, if true, would afford him relief, it is his constitutional right to be present when the truth of his allegations is inquired into; and it is also his undoubted right, under our Habeas Corpus act, to establish his allegations by evidence to be introduced and heard upon the return of the writ. To deny him the writ is virtually to condemn him unheard; and as I can see nothing in this case which requires at our hands an extraordinary resistance against the prayer of the petitioner to show that his imprisonment is illegal, that he is deprived of his liberty without due course of law, I am in favor of treating him as like cases have uniformly been treated in this Commonwealth, by awarding the writ of habeas corpus, and receiving the inquiry as to his right to be discharged until the return of the writ; but as a majority of my brethren have come to a different conclusion, we must inquire next into the right of the applicant to be discharged as the case is now presented.

I suppose it to be undoubted law that in a case where a Court acting beyond its jurisdiction, has committed a person to prison, the prisoner, under our habeas corpus act, is entitled to his discharge, and that it makes no difference whether the Court thus transcending its jurisdiction assumes to act as a Court of the Union or of the Commonwealth. If a principle, apparently so just and clear, needs for its support adjudicated cases, reference can be had to Wise vs. Withers, third Cranch, 331; first Peters' Condensed Reports, 562; Rose vs. Himely, fourth Cranch, 241, 268; Den vs. Harden, first Paine Reports, 55, 58 and 59; third Cranch, 448; Bollman vs. Swartout, fourth Cranch, 75; Kearney's case, seventh Wheaton 38; Kemp vs. Kennedy, first Peters' C. C. R. 36; Wickes vs. Caik, 5 Har. and J., 2; Griffith vs. Frazier, 8 Cranch, 9; Com. vs. Smith, Sup. Court Penn., first Wharton Digest, 321; Com. ex relatione Lockington vs. the Jailer, &c., Sup. Court manuscript, 1814, Wharton's Digest, vol. 1st, 321; Albee vs. Ward, 8 Mass. 86.

Some of these cases decide that the act of a Court without jurisdiction is void; some, that the proper remedy for an imprisonment by a Court having no jurisdiction is the writ of habeas corpus; and others, that it may issue from a State Court to discharge a prisoner committed under process from a Federal Court, if it clearly appears that the Federal Court had no jurisdiction of the case; altogether, they establish the point that the petitioner is entitled to relief, if he is restrained of his liberty by a Court acting beyond his jurisdiction.

Neither do I conceive it to be correct to say that the applicant cannot now question the jurisdiction of the Judge of the District Court because he did not challenge it on the hearing. There are many rights and privileges which a party to a judicial controversy may lose if not claimed in due time, but not so the question of jurisdiction; this cannot be given by express consent, much less will acquiescence for a time waive an objection to it. (See U. S. Digest, vol. 1, p. 639, Pl. 62, and cases there cited.) It would be a harsh rule to apply to one who is in prison "without bail or mainprize" that his omission to speak on the first opportunity forever closed his mouth from denying the power of the Court to deprive him of his liberty. I deny that the law is a trap for the feet of the unwary. Where personal liberty is concerned, it is a shield for the protection of the citizen, and it will answer his call even if made after the prison door has been closed on him.

If, then, the want of jurisdiction is fatal, and the inquiry as to its existence is still open, the only question that remains to be considered is this: Had the Judge of the District Court for the Eastern District of the United States power to issue the writ of habeas corpus directed to Passmore Williamson upon the petition of John H. Wheeler? The power of that Court to commit for a contempt is not denied, and I understand it to be conceded as a general rule by the petitioner's counsel, that one Court will not [illegible] a commitment for contempt by another Court of competent jurisdiction; but if the Court had no authority to issue the writ, the respondent was not bound to answer it, and his neglect or refusal to do so would not authorize his punishment for contempt.

The first position which I shall take in considering the question of jurisdiction, is that the Courts of the United States have no power to award the writ of habeas corpus except such as is given to them by the acts of Congress.

"Courts which originate in the common law possess a jurisdiction which must be regulated by the common law; but the Courts which are created by written law and whose jurisdiction is defined by written law, cannot transcend that jurisdiction. The power to award the writ by any of the Courts of the United States must be given by written law." Ex parte Bollman, 4th Cranch, 75. Ex parte Barre 2, Howard 65. The power of the United States to issue writs of habeas corpus is derived either from the 14th section of the Act of 24th September, 1789, or from the seventh section of the Act of March 2, 1833.

The section from the Act of 1789 provides that "all the Courts of the United States may issue writs of scire facias, habeas corpus, and all other writs not especially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. And either of the Justices of the Supreme Court, as well as the Judges of the District Courts, may grant writs of habeas for the purpose of inquiry into the cause of commitment; but writs of habeas corpus shall in no case extend to prisoners in jail unless they are in custody under or by color of the authority of the United States, or are committed for trial before some Court of the same, or are necessary to be brought into Court to testify." The 7th section of the Act of 2d March, 1833, authorizes "either of the Justices of the Supreme Court, or Judge of any District Court of the United States, in addition to the authority already conferred by law, to grant writs of habeas corpus in all cases of a prisoner or prisoners in jail or confinement, where he or they shall be committed or confined on or by authority of law for any act done or omitted to be done in pursuance of a law of the United States, or any order, process, or decree of any Judge or Court thereof, anything in any Act of Congress to the contrary notwithstanding."

Now, unless the writ of habeas corpus issued by the Judge of the District Court was necessary for the exercise of the jurisdiction of the said Court, or was to inquire into a commitment under or by color of the authority of the United States, or to relieve some one imprisoned for an act done, or omitted to be done, in pursuance of a law of the United States, the District Court had no power to issue it, and a commitment for contempt in refusing to answer it is an illegal imprisonment, which, under our habeas corpus act, we are imperatively required to set aside.

It cannot be pretended that the writ was either asked for or granted to inquire into any commitment made under or by color of the authority of the United States, or to relieve from imprisonment for an act done or omitted to be done in pursuance of a law of the United States, and therefore we may confine our inquiry solely to the question whether it was necessary for the exercise of any jurisdiction given to the District Court of the United States for the Eastern District of Pennsylvania.

This brings us to the question of the jurisdiction of the Courts of the United States, and more particularly that of the District Court. And here, without desiring or intending to discuss at large the nature and powers of the Federal Government, it is proper to repeat what has been so often said, and what has never been denied, that it is a Government of enumerated powers, delegated to it by the several States, or the people thereof, without capacity to enlarge or extend the powers so delegated and enumerated, and that its Courts of justice are Courts of limited jurisdiction, deriving their authority from the Constitution of the United States, and the acts of Congress under the Constitution. Let us see what judicial power was given by the people to the Federal Government, for that alone can be rightly exercised by its Courts.

"The judicial power" (says the second section of the third article) "shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority, to all cases affecting embassadors, other public ministers and consuls, to all cases of admiralty and maritime jurisdiction, to controversies to which the United States shall be a party, to controversies between two or more States, between a State and citizen of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State or the citizen thereof and foreign States, citizens or subjects."

The amendments subsequently made to this article have no bearing upon the question under consideration, nor is it necessary to examine the various acts of Congress conferring jurisdiction upon the courts of the United States, for no act of Congress can be found extending the jurisdiction beyond what is given by the Constitution, so far as relates to the question we are now considering. And if such an act should be passed it would be in direct conflict with the 10th amended article of the Constitution, which declares that "the powers not delegated "to the United States by the Constitution, nor prohibited by it "to the States, are reserved to the States respectively or to the "people."

If this case can be brought within the judicial power of the courts of the United States, it must be either

1st, Because it arises under the Constitution or the laws of the United States.

Or, 2d, Because it is a controversy between citizens of different States, for it is very plain that there is no other clause in the Constitution which, by the most latitudinarian construction, could be made to include it.

Did it arise under the Constitution or the laws of the United States? In order to give a satisfactory answer to this question, it is necessary to see what the case was.

If we confine ourselves strictly to the record from the District Court, we learn from it that, on the 18th day of July last, John H. Wheeler presented his petition to the Hon. J. K. Kane, Judge of the District Court for the Eastern District of Pennsylvania, setting forth that he was the owner of three persons held to service or labor by the laws of the State of Virginia; such persons being respectively named Jane, aged about thirty five years, Daniel, aged about twelve years, and Isaiah aged about seven years, persons of color; and that they were detained from his possession by Passmore Williamson, but not for any criminal or supposed criminal matter. In accordance with the prayer of the petition, a writ of habeas corpus was awarded, commanding Passmore Williamson to bring the bodies of the said Jane, Daniel and Isaiah, before the Judge of the District Court forthwith. To this writ, Passmore Williamson made a return, verified by his affirmation, that the said Jane, Daniel, and Isaiah, nor either of them, were at the time of the issuing of the writ, nor at the time of the return, nor at any other time, in the custody, power or possession of, nor confined, nor restrained their liberty by him; and that, therefore, he could not produce the bodies as he was commanded.

This return was made on the 20th day of July A. D. 1855. "Whereupon, afterwards, to wit: On the 27th day of July, "A. D. 1855 [says the record], the counsel for the several parties having been heard, and the said return having been duly "considered, it is ordered and adjudged by the Court that the "said Passmore Williamson be committed to the custody of the "Marshall, without bail or mainprize, as for a contempt in refusing to make return to the writ of habeas corpus, heretofore "issued against him, at the instance of Mr. John H. Wheeler."

Such is the record. Now while I am willing to admit that the want of jurisdiction should be made clear, I deny that in a case under our habeas corpus act the party averring want of jurisdiction cannot go behind the record to establish its non-existence. Jurisdiction, or the absence thereof, is a mixed question of law and fact. It is the province of fact to ascertain what the case is, and of law to determine whether the jurisdiction attaches to the case so ascertained. And says the 2d section of our act of '85, "and that the said Judge or Justice may, according "to the intent and meaning of this act, be enabled, by in-"vestigating the truth of the circumstances of the case, to de-"termine whether, according to law, the said prisoner ought to "be bailed, remanded or discharged, the return may, before or "after it is filed, by leave of the said Judge or Justice, be "amended and also suggestions made against it, so that thereby "material facts may be ascertained."

This provision applies to cases of commitment or detainer for any criminal or supposed criminal matter, but the 14th section, which applies to cases of restraint of liberty "under any color "or pretence whatever," provided that "the Court, Judge, or "Justice, before whom the party so confined or restrained shall "be brought, shall, after the return made, proceed in the same "manner as is hereinbefore prescribed, to examine into the "facts relating to the case, and into the cause of such confine-"ment or restraint, and thereupon either bail, remand or dis-"charge the party so brought, as to justice shall appertain."

The right and duty of the Supreme Court of a State to protect a citizen thereof from imprisonment by a Judge of a United States Court having no jurisdiction over the cause of complaint, is so manifest and so essentially necessary under our dual system of government, that I cannot believe that this right will ever be abandoned or the duty avoided; but, if we concede, what appears to be the law of the later cases in the Federal Courts, that the jurisdiction need not appear affirmatively, and add to it that the want of jurisdiction shall not be proved by evidence outside of the record, we do virtually deny to the people of the State the right to question the validity of an order by a Federal Judge consigning them to the walls of a prison "without bail or mainprize."

What a mockery to say to one restrained of his liberty, "True, if the Judge or Court under whose order you are in "prison acted without jurisdiction, you are entitled to be dis-"charged, but the burden is upon you to show that there was no "jurisdiction, and in showing this we will not permit you to go "beyond the record made up by the party against whom you "complain."

As the petitioner would be legally entitled, upon the return of the writ, to establish the truth of the facts set forth in his petition, so far as they bear upon the question of jurisdiction, we are bound before the return to assume that the facts are true as stated, and so taking them the case is this:

John H. Wheeler voluntarily brought into the State of Pennsylvania three persons of color, held by him in the State of Virginia as slaves, with the intention of passing through this State. While on board of a steamboat near Walnut-st. wharf, in the City of Philadelphia, the petitioner, Passmore Williamson, informed the mother that she was free by the laws of Pennsylvania, who, in the language of the petition, "expressed her de-"sire to have her freedom; and finally, with her children, left "the boat of her own free will and accord, and without coercion "or compulsion of any kind; and having seen her in possession "of her liberty with her children, your petitioner (says the pe-"tition) returned to his place of business, and has never since "seen the said Jane, Daniel and Isaiah, or either of them, nor "does he know where they are, nor has he had any connection "of any kind with the subject."

One owning slaves in a Slave State voluntarily brings them into a Free State with the intention of passing through the Free State. While there, upon being told that they are free, the slaves leave their master. Can a Judge of the District Court of the United States compel their restoration through the medium of a writ of habeas corpus directed to the person by whom they were informed of their freedom? Or, in other words, is it a case arising under the Constitution and laws of the United States?

What article or section of the Constitution has any bearing upon the right of a master to pass through a Free State with his slave or slaves? Or, when has Congress ever attempted to legislate upon this question? I most unhesitatingly aver that neither in the Constitution of the United States nor in the Acts of Congress can there be found a sentence which has any effect upon this question whatever. It is a question to be decided by the law of the State where the person is for the time being, and that law must be determined by the Judges of the State, who have sworn to support the Constitution of the State as well as that of the United States—an oath which is never taken by a Federal Judge.

Upon this question of jurisdiction it is wholly immaterial whether by the law of Pennsylvania a slaveholder has or has not the right of passing through our State with his slaves. If he has the right, it is not in virtue of the Constitution or laws of the United States but by the law of the State and if no such right exists it is because the State law has forbidden it, or has failed to recognize it. It is for the State alone to legislate upon this subject, and there is no power on earth to call her to an account for her acts of omission and commission in this behalf.

If this case, by any reasonable construction, be brought within the terms of the third clause of the second section of article four of the Constitution of the United States, jurisdiction might be claimed for the Federal Courts, as then it would be a case arising under the Constitution of the United States, although I believe the writ of habeas corpus is no part of the machinery designed by Congress for the rendition of fugitives from labor.

"No person (says the clause above mentioned) held to service or labor in one State under the laws thereof escaping into "another shall, in consequence of any law or regulation therein, "be discharged from such service or labor, but shall be deliv-"ered up on claim of the party to whom such service or labor "may be due." By reference to the debates in the Convention it will be seen that this clause was inserted at the request of delegates from Southern States, and on the declaration that in the absence of a constitutional provision the right of reclamation would not exist unless given by State authority. If it had been intended to cover the right of transit, words would have been used evidencing such intention. Happily there is no [illegible] to the construction which has been placed upon this clause in the Constitution. No Judge has ever so manifestly disregarded its plain and unequivocal language as to hold that it applies to a slave voluntarily brought into a Free State by his master. On the contrary, there is abundant authority that such a case is not within either the letter or the spirit of the constitutional provision for the rendition of fugitives from labor. Said Mr. Justice Washington, ex parte Simmons, 4 W. C. C. Reports 396:

"The slave in this case having been voluntarily brought by his master into this State, I have no cognizance of the case, so far as respects this application, and the master must abide by the laws of this State, so far as they may affect his right. If the man claimed as a slave be not entitled to his freedom under the laws of this State, the master must pursue such remedy for his recovery as the laws of the State have provided for him."

In Jones vs. Vanzandt, 5th Howard, 229, Mr. Justice Woodbury uses language equally expressive: "But the power of na-"tional law," said that eminent jurist, "to pursue and regain "most kinds of property in the limits of a foreign government "is rather an act of comity than strict right, and hence as prop-"erty in persons might not thus be recognized in some of the "States in the Union, and its reclamation not be allowed "through either courtesy or right, this clause was undoubtedly "introduced into the Constitution as one of its compromises for "the safety of that portion of the Union which did not permit "such property, and which otherwise might often be deprived "of it entirely by its merely crossing the line of an adjoining "State; this was thought to be too harsh a doctrine in respect "to any title to property of a friendly neighbor, not brought nor "placed in another State under State laws by the owner him-"self, but escaping there against his consent and often forth-"with pursued in order to be reclaimed."

Other authorities might be quoted to the same effect, but it is unnecessary, for if it be not clear that one voluntarily brought into a State is not a fugitive, no judicial language can ever make it so. Will we then, for the sake of sustaining this jurisdiction, presume that these slaves of Mr. Wheeler escaped from Virginia into Pennsylvania, when no such allegation was made in his petition, when it is expressly stated in the petition of Mr. Williamson, verified by his affirmation, that they were brought here voluntarily by their master, and when this fact is virtually conceded by the Judge of the District Court in his Opinion? Great as is my respect for the judicial authorities of the Federal Government, I cannot consent to stultify myself in order to sustain their unauthorized judgments, and more particularly where, as in the case before us, it would be at the expense of the liberty of a citizen of this Commonwealth.

The only remaining ground upon which this jurisdiction can be claimed, is that it was in a controversy between citizens of different States, and I shall dismiss this branch of the case simply by affirming—1, that the proceeding by habeas corpus is, in no legal sense, a controversy between private parties; and 2, if it were, to the Circuit Court alone is given this jurisdiction. For the correctness of the first position, I refer to opinion of Mr. Justice Baldwin in Holmes vs. Jennifer, published in the appendix to 14 Peters, and to that of Judge Betts, of the Circuit Court of New York in Barry vs. Mercein et al. reported in 5 Howard 103. And for the second, to the 11th section of the Judiciary Act, passed on the 24th of September, 1789.

My view of this case had been committed to writing before I had seen or heard the Opinion of the majority of the Court. Having heard it hastily read but once, I may mistake its purport, but if I do not, it places the refusal of the habeas corpus mainly upon the ground that the conviction for contempt was a separate proceeding, and that, as the District Court had jurisdiction to punish for contempts, we have no power to review its decision. Or, as it appears from the record that the prisoner is in custody upon a conviction for contempt, we are powerless to grant him relief.

Notwithstanding the numerous cases that are cited to sustain this position, it appears to me to be as novel as it is dangerous. Every court of justice in this country has, in some degree, the power to commit for contempt. Can it be possible that a citizen once committed for contempt is beyond the hope of relief, even although the record shows that the alleged contempt was not within the power of the court to punish summarily? Suppose that the Judge of the District Court should send to prison an editor of a newspaper for a contempt of his court in commenting upon his decision in this very case; would the prisoner be beyond the reach of our writ of habeas corpus? If he would, our boasted security of personal liberty is in truth an idle boast, and our constitutional guaranties and writs of right are as ropes of sand. But in the name of the law, I aver that no such power exists with any Court or Judge, State or Federal, and if it is attempted to be exercised, there are modes of relief, full and ample, for the exigency of the occasion.

I have not had either time or opportunity to examine all of the cases cited, but as far as I have examined them, they decide this and nothing more—that where a court of competent jurisdiction convicts one of a contempt, another court, without appellate power, will not reexamine the case to determine whether a contempt was really committed or not. The history of punishments for contempts of courts, and the legislative action thereon, both in our State and Union, is an unmistakable manner teaches, first, the liability of this power to be abused; and second, the promptness with which its unguarded use has been followed by legislative restrictions. It is no longer an undefined, unlimited power of a star chamber character, to be used for the oppression of the citizen at the mere caprice of the judge or court, but it has its boundaries so distinctly defined that there is no mistaking the extent to which our tribunals of law may go in punishment for this offense.

In the words of the act of Congress of 2d March, 1831, "The "power of the several courts of the United States to issue at-"tachments and inflict summary punishments for contempts of "court, shall not be construed to extend to any cases except the "misbehavior of any person or persons in the presence of said "courts, or so near thereto as to obstruct the administration of "justice, the misbehavior of any of the officers of the said courts "in their official transactions, and the disobedience or resistance "by any officer of the said courts, party, jurors, witness, or any "other person or persons, to any *lawful* writ, process, order "rule, decree, or command of said courts."

Now Passmore Williamson was convicted of a contempt for disobeying a writ of habeas corpus, commanding him to produce before the District Court certain persons claimed by Mr. Wheeler as slaves. Was it a lawful writ? Clearly not, if the Court had no jurisdiction to issue it; and that it had not I think is very plain. If it was unlawful the person to whom it was directed was not bound to obey it; and, in the very words of the statute, the power to punish for contempt "shall not be constructed to "extend to it."

But, says the opinion of the majority, he was convicted of a contempt of Court, and we will not look into the record to see how the contempt was committed. I answer this by asserting that you cannot see the conviction without seeing the cause: 1, of the petition; 2, the writ and the alias writ of habeas corpus; 3, the return, and 4, the judgment.

"It is ordered and adjudged by the Court that the said Passmore Williamson be committed to the custody of the Marshal without bail or mainprize, as for a contempt in refusing to make return to the writ of habeas corpus heretofore issued against him at the instance of Mr. John H. Wheeler." As I understand the opinion of a majority of my brethren, as soon as we get to the word contempt the book must be closed, and it becomes instantly sealed as to the residue of the record. To sustain this commitment we must, it seems, first presume, in the very teeth of the admitted fact, that these were runaway slaves; and second, we must be careful to read only portions of the record lest we should find that the prisoner was committed for refusing to obey an unlawful writ.

I cannot forbear the expression of the opinion that the rule laid down in this case by the majority is fraught with great danger to the most cherished rights of the citizens of the State. While in contests involving the right of property merely, I presume we may still treat these judgments of the United States Courts, in cases not within their jurisdiction, as nullities; yet, if a single Judge thinks proper to determine that one of our citizens has been guilty of contempt, even if such determination had its foundation in a case upon which the Judge had no power to pronounce judgment, and was most manifestly in direct violation of a solemn act of the very legislative authority that created the Court over which the Judge presides, it seems that such determination is to have all the force and effect of a judgment pronounced by a Court of competent jurisdiction, acting within the admitted sphere of its constitutional powers.

Nay, more. We confess ourselves powerless to protect our citizens from the aggressions of a Court, as foreign from our State government in matters not committed to its jurisdiction as the Court of Queen's Bench, in England, and this upon the authority of decisions pronounced in cases not at all analogous to the one now under consideration. I believe this to be the first recorded case where the Supreme Court of a State has refused the prayer of a citizen for the writ of habeas corpus to inquire into the legality of an imprisonment by a Judge of a Federal Court for contempt, in refusing obedience to a writ void for want of jurisdiction.

I will conclude by recapitulating the grounds upon which I think this writ should be awarded.

1. At common law, and by our statute of 1785, the writ of habeas corpus ad subjiciendum is a writ of right, demandable whenever a petition in due form asserts what, if true, would entitle the party to relief.

2. That an allegation in a petition that the petitioner is restrained of his liberty by an order of a Judge or Court without jurisdiction shows such probable cause as to leave it no longer discretionary with the Court or Judge to whom application is made, whether the writ shall or shall not issue.

3. That where a person is imprisoned by an order of a Judge of the District Court of the United States for refusing to answer a writ of habeas corpus he is entitled to be discharged from such imprisonment if the Judge of the District Court had no authority to issue the writ.

4. That the power to issue writs of habeas corpus by the Judges of the Federal Courts is a mere auxiliary power, and that no such writ can be issued by such Judges where the cause of complaint to be remedied by it is beyond their jurisdiction.

5. That the Courts of the Federal Government are Courts of limited jurisdiction, derived from the Constitution of the United States and the acts of Congress under the Constitution, and that when the jurisdiction is not given by the Constitution or by Congress in pursuance of the Constitution, it does not exist.

6. That when it does not appear by the record that the Court had jurisdiction in a proceeding under our habeas corpus act to relieve from an illegal imprisonment, want of jurisdiction may be shown by proving the facts in the case.

7. That where the inquiry as to the jurisdiction of a Court arises upon a rule for a habeas corpus, all the facts set forth in the petition tending to show want of jurisdiction are to be considered as true, unless they contradict the records.

8. That when the owner of a slave voluntarily brings his slave from a Slave to a Free State, without any intention of remaining therein, the right of the slave to his freedom depends upon the law of the State into which he is thus brought.

9. That if a slave so brought into a Free State escapes from the custody of his master while in said State, the right of the master to reclaim him is not a question arising under the Constitution of the United States or the laws thereof; and therefore a Judge of the United States cannot issue a writ of habeas corpus directed to one who it is alleged withholds the possession of the slave from the master, commanding him to produce the body of the slave before said Judge.

10. That the District Court of the United States for the Eastern District of Pennsylvania has no jurisdiction because a controversy is between citizens of different States, and that a proceeding by habeas corpus is, in no legal sense, a controversy between private parties.

11. That the power of the several courts of the United States to inflict summary punishment for contempt of court in disobeying a writ of the court, is expressly confined to cases of disobedience to lawful writs.

12. That where it appears from the record that the conviction was for disobeying a writ of habeas corpus, which writ the Court have no jurisdiction to issue, the conviction is *coram non judice*, and void.

For these reasons I do most respectfully, but most earnestly, dissent from the judgment of the majority of my brethren refusing the writ applied for.

QUARTER SESSIONS—Judge KELLY —THE WHEELER SLAVE MATTER—SENTENCES.—On Saturday the colored men, Custis and Ballard, who were convicted of an assault and battery on Col. John Wheeler, were called up for sentence.

Mr. Wm. H. Pierce, defendants' counsel, offered evidence in extenuation of any punishment the Court might think proper to inflict. It was then submitted in evidence that these men, when arrested on the 18th of July last, were taken to the Cherry-st. Station House, Sixth Ward, and locked in a cell with three others (arrested for the same offense) and kept there twenty hours without food, the thermometer standing at 90 degrees. The heat in the cell was so intolerable that the men had to strip off all their clothes. They were thence taken to prison, where they were incarcerated ten days, and only released by the interposition of the Court of Quarter Sessions. The counsel called two of the former co-defendants of the prisoners, and they both swore that Ballard was not on the upper deck of the boat at all.

Judge Kelly said that they had a perfect right to go to the boat and tell the woman Jane of her rights; but that by their actions they had injured the cause they no doubt at heart wished to serve. He reproved them for the use of violence and the threatening language they had used.

That, in the sentence he was about to pass upon them, he had in view the circumstances of the case—the outrageous holding to bail by the Alderman in an enormous sum, the sufferings they had been subjected to, and the fact that a very large witness bill had been presented against them, he would only sentence each to pay a fine of $10 and costs, and one week's imprisonment.

It is stated that President Pierce has recently bought a farm of 600 acres near Colesville, Montgomery County, Md., a few miles from Washington, as his future home.

The number of deaths in Philadelphia last week was 208, an increase of 41 over the previous week.

THOUGHTS ON THE CENSUS.

From The N. Y. Examiner.

The census of the State of New-York for the year 1855 indicates, even in its present incomplete state, significant changes in the population. The cities and large towns are increasing in the number of their inhabitants, and the rural districts are falling away. New-York City is supposed to have added not less than two hundred thousand to its population within the last five years, and Brooklyn has increased in a large, though perhaps not an equal ratio. New York, and the cities and towns around it, contain about one million of souls, or a fourth part of the entire population of the State. Albany, Troy, and the cities thence west, to Buffalo, have had a fair increase, and some of the towns on the Erie Railroad, Elmira especially, have almost duplicated their population. But the rural villages and the agricultural districts show no such facts. They are stationary or declining, and in some cases the decline has been rapid beyond any possible anticipations.

These changes are the results of natural causes, and are inevitable. It is within the recollection of readers between forty and fifty years of age, that in their younger days all mechanical trades were diffused with the population whose wants they supplied, and that home manufactures furnished the staple articles of rural households. The increase of the facilities of intercommunication has concentrated the trades, that they may take advantage of the divison of labor, and mechanics have therefore crowded to the towns and cities. The local blacksmith once patiently hammered out the nails which fastened his neighbor's house, and fashioned the shoes and the nails for the feet of his neighbor's horses. Now he does neither. The machinery of great central establishments presents all this work done to the blacksmith's hands much more cheaply than he can do it. Then the farmer paid for the tanning of his hides at the village tannery, (probably by leaving with the tanner a part of the product,) and the peripatetic shoemaker made an annual visit to his house, to convert them into boots and shoes for his family. Now the village tannery is a historical recollection, and shoes and boots are mainly purchased at the stores, the products of great manufacturing establishments. Then on a Summer's afternoon, at the door on the shady side of the farm-house, might be seen the wife and mother busily spinning her flax, while the hum in the chamber indicated the industry of the daughters at work at the wool. The flax was converted into linen, which entered into all manner of household furnishings, and the wool became flannel and cloth for household wear. The loom was an indispensable article in every rural household, and every ambitious damsel was proud of the linen, wrought by her own hands, which became a part of her bridal portion. But these too are now recollections only, narrated for the wonder or amusement of grandchildren. The wool is sold from the shears of the farmer, and never seen in-doors till it comes back in cloth or ready-made clothing. The old falling-mill is dilapidated, and the carding-machine has decayed and vanished away, and those who worked them have fled elsewhere for employment. Flax has become obsolete, and the sweat of slaves and the looms of Lowell replace it with cotton.

These are but illustrations showing a process which has been long at work, and which has of late been precipitated by the multiplication of railroads. Diffused mechanical labor of all kinds has in this manner been falling steadily away, and even now has not probably reached its minimum.

Nor is this the only cause affecting the decline of the rural population. In many sections agriculture itself is requiring less manual labor. The horse rake commenced a change which sowing, and hoeing, and mowing, and reaping, and thrashing machines have perfected. The farmer parts with his sons, who go to the cities or to the West, because with improved implements of agriculture he has less apparent demand for their services, or because the less intelligent labor of immigrant foreigners will answer his purpose as well. By steady drains like these the decline of the rural population is inevitable. Of course it must at some time reach its minimum, but it is as yet impossible to determine the limits of the process.

The moral suggestions arising from these tendencies are numerous and important. The accumulation of the population in towns and cities is not favorable to public virtue and the general progress of religion. With the increase of the population of large places, there is almost uniformly an increase of temptation and vice—in *all cases* where it is not specifically counteracted by strong moral and religious causes. The duty of Christians to multiply the agencies of evangelization in such places is most apparent and imperative. With all that Christians in this City are doing to promote the religious welfare of the population, there is but a most inadequate amount of labor and sacrifice, relatively to the demands of the increasing population. It is impossible to reflect on this subject without the most serious apprehensions. We believe that Christians of our own and of other denominations are committing a serious error and sin, that they are not organizing themselves for the specific work of spreading churches and all means of grace with the growth of the City. There is the same need likewise in other growing populations, and neglect of the opportune hour will have its bitter harvest in giving us towns and cities copying the vices of the Old World.

The destiny of the rural churches, under these inevitable changes of population, it is perhaps too early to predict. The increased value of agricultural products, and the growing wealth of rural districts, will postpone pecuniary weakness, though rural congregations may decline in numbers. Of one thing there can be no doubt. The constant intercourse kept up between city and country, and the increasing aggregate intelligence of the rural districts, are creating a demand for a higher average intelligence in the ministry, and rural churches which are neglectful at this point, will be among the first to suffer.

MILITARY.

The City Blues, Capt. Fowler, celebrate their Sixth Anniversary to-day by an excursion to Princeton, New-Jersey.

The Independent Guards, of Buffalo, Company D., Major Bidwell Commandant, will arrive in this morning's boat from Albany, Tuesday 11th. This corps is said to be the finest and best-drilled in the Queen City of the Lakes. They will be received on their arrival by the Flank Company of National Grays, Capt. Raynor. In the afternoon they will parade in company with the Grays, and will be reviewed in the Park by the Mayor and Common Council, after which they will be entertained at the armory of the Grays. They will also attend Parodi's concert by special invitation. The Guards, during their sojourn, will visit the City institutions, Blackwell's Island, &c., by invitation from the Heads of Departments.

The Eighth Regiment, Washington Grays, Colonel Lyon, assembled for parade and inspection. The several companies composing the regiment assembled at Hamilton-square at 10 o'clock, where they went through the manual of arms, with loading and firing and drill service. They went through all the movements of firing with black cartridges, standing, kneeling, advancing and retiring.

A large number of persons witnessed the display, which was very creditable to the Washington Grays.

FIRES.

FIRE IN SEVENTH-AVENUE.

Last evening at a late hour a fire broke out in the frame building No. 481 Seventh-av., occupied by George Kohler as a packing-box factory. In consequence of the inflammable nature of the material about the premises the flames spread with great rapidity, and before they could be subdued the building with its contents was nearly destroyed. The flames extended to the frame building No. 483, adjoining, occupied as a dwelling, which was also destroyed; the occupants, however, succeeding in saving most of their furniture. The gable end of the building No. 479, occupied as a dwelling, was considerably damaged. The total loss will not exceed $3,500. The building No. 479 is insured in the Broadway Insurance Company.

FIRE IN EAST BROADWAY.

About 9 o'clock last night the alarm of fire was caused by the burning out of a sooty chimney at No. 200 East Broadway. Damage slight.

THE EFFECT.—At a late anniversary of Yale College Professor Silliman was called out by a complimentary toast. In the course of his remarks the Professor proceeded for the benefit of the younger brothers present to say how it was that at his age (76 years) he enjoyed such excellent health and spirits. He said that at thirty he was dyspeptic and feeble. He cut off determinedly all stimulants, and had used none since. He dieted one year, and then returned to his labor. He ate always plain, nutritious food and drank nothing but plain diluent drinks. He eschewed tobacco in every form. Every morning he used the sponge and cold water, and felt now no less power of endurance than when he was a young man, and no abatement of intellectual power.